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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,691	06/15/2006	Luc Uytterhaeghe	Q92317	3788
23373 7590 12/10/2008 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			EXAMINER TYLER, STEPHANIE E	
			ART UNIT 3754	PAPER NUMBER
			MAIL DATE 12/10/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/562,691

**Applicant(s)**

UYTTERHAEGHE ET AL.

**Examiner**

STEPHANIE E. TYLER

**Art Unit**

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-18 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CIS) Paper No(s)/Mail Date 12/27/2005
- 4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: On page 7, lines 11&12 of the Specification terms "end" should be --free-- and "free" should be --end--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the limitation "the control element" in line 2. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-6,12-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Erb (6,296,157).

The Erb discloses a fluid product distributing tap/head having a distribution valve (2',4,2",5') displaceable elastically between a closed position and open position, a manually actuatable control element (5") for leading the distribution valve from its closed position to the open position and at least one element making up the head being made by jointly molding two different plastic materials (for elements 5" and 5'); a base (16), a cap (1,14,15); and wherein the base forming a first part (when cap is inserted into the base; 2',4,2") of the valve, the cap forming a second part (5') of the valve to cooperate with the first part to form together the distribution valve; and wherein the cap is connected to the base by articulation (the interconnecting of the two); and wherein the cap (1,14,15) is connected to the base (16) and can be moved relative to the base (16) between an initial molding position and a final installation position, wherein the cap is

mounted tightly on the base; and wherein the first and second parts of the valve are clamped in the final mounting position, whereas they are separated from one another in the initial molding position; and wherein the first part formed by the base consists of a deformable annular seat (see fig.1; when assembled), and the second part formed by the cap consists of an annular mobile element (5'; via element 4) to come into close contact on the seat in the closed position; and wherein the cap (1,14,15) forms a control element (5"); and wherein an entry space (near bottom of 16) separate from an exit space (2) by the valve (2',4,2",5'), the space extending concentrically around the inlet space (opening of 16 to the container); and wherein the control element of the cap comprises a mobile support surface (5"), the second part (5') being integral in displacement with the support surface (5"), the cap further consisting of a rigid external crown in close contact with the base (16) in the final mounting position, the crown (see fig.1, upper annular flange of 1) being connected to the support surface (5") and to the second part (5') by an elastically deformable membrane (see fig.1, cylindrical surface of 14); and wherein the base (16) forms a distribution opening (3; when connected to the cap) communicating upstream with the exit space (open space of 1).

Regarding claims 2,3,14, Applicant is reminded that claims are limited by structure not the method of making. See MPEP 2113.

6. Claims 1,7-10,12-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Smith (WO 03/035274).

The Smith reference discloses a fluid product distributing pump dispenser having a distribution valve (17,18,16) displaceable elastically between a closed position and open position, a manually actuatable control element (16) for leading the distribution valve from its closed position to the open position and at least one element making up the head being made by jointly molding two different plastic materials (for elements 16 and 17); a base (11), a cap (10); and wherein the base forming a first part (17) of the valve, the cap forming a second part (inner annular surface of 10; see fig.3) of the valve to cooperate with the first part to form together the distribution valve; and wherein the first part formed by the base comprises a deformable annular seat (17), and the second part formed by the cap consists of an annular mobile element (inner annular surface of 10; see fig.3) to come into close contact on the seat in the closed position; and wherein the deformable annular seat is formed by an elastically deformable annular lip (17); and wherein the mobile annular element comprises a rigid socket (inner annular surface of 10; see fig.3) consists of an annular free end (protruded annular free end; see fig.3) supposed to come into close contact with the seat (17) in the closed position and means for forming a flow passage (between 17 and the inner annular surface of 10; see fig.3 when in open position) to come into non-watertight contact with the seat (17) in the open position; and wherein an entry space (opening of 20) separate from an exit space (space leading to the inlet of 15) by the valve (17,18,16), the space extending concentrically around the inlet space; and wherein base (11) forms a distribution opening (15) communicating upstream with the exit space (space leading to the inlet of 15); and wherein the base forms a hole for admission of air (22) communicating with the

exit space (space leading to the inlet of 15); and wherein the cap (10) forms the control element (16); and wherein the control element of the cap comprises a mobile support surface (16), the second part (inner annular surface of 10; see fig.3) being integral in displacement with the support surface (16), the cap further consisting of a rigid external crown in close contact with the base (11) in the final mounting position, the crown (annular outside surface of 10) being connected to the support surface (16) and to the second part (inner annular surface of 10; see fig.3) by an elastically deformable membrane (lower outer annular surface; see fig.1). The present device of Smith meets the functional use as recited in claim 18.

Regarding claims 9, Applicant is reminded that claims are limited by structure not the method of making. See MPEP 2113.

#### ***Allowable Subject Matter***

7. Claim 11 is objected to as being dependent upon a rejected base claim, but would appear to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Stewart et al. (2,853,210) and Anderson (4,711,378) are other types of various fluid dispensing heads.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEPHANIE E. TYLER whose telephone number is (571)272-8059. The examiner can normally be reached on 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. E. T./  
Examiner, Art Unit 3754

/Frederick C. Nicolas/  
Primary Examiner, Art Unit 3754